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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 64**

**[CG Docket No. 10-51; FCC 11-155]**

Structure and Practices of the Video Relay Service Program.

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes to modify its rules to provide that a certified provider may subcontract with another certified provider for, or otherwise authorize the provision by another certified provider of, communications assistants (CA) services or call center functions only in the event of an unexpected and temporary surge in call traffic due to exigent circumstances, and seeks comment on this proposal. The purpose of this rule change is to provide clarity as to the circumstances under which the Commission will deem subcontracting of call handling functions acceptable.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested parties may submit comments identified by **[CG Docket No. 10-51]**, by any of the following methods:

- Federal Communications Commission's web site: Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 559-5158 (VP) or e-mail at [Gregory.Hlibok@fcc.gov](mailto:Gregory.Hlibok@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Structure and Practices of the Video Relay Service Program, Further Notice of Proposed Rulemaking (FNPRM), document FCC 11-155, adopted October 17, 2011, and released October 17, 2011 in CG Docket number 10-51.

The full text of document FCC 11-155 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW., Room CY-A257, Washington, DC 20554. Document FCC 11-155 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, BCPI, Inc., Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via its web site [www.bcpweb.com](http://www.bcpweb.com) or by calling (202) 488-5300. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Document FCC 11-155 can also be downloaded in Word or Portable Document Format (PDF) at:

<http://www.fcc.gov/cgb/dro/trs.html#orders>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket number of this proceeding, CG Docket No. 10-51.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 10-51.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or

by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

Pursuant to 47 CFR 1.1200 et. seq., this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format

(e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## **SYNOPSIS**

In document FCC 11-155, the Commission clarifies that certified VRS providers may roll-over VRS traffic to another eligible provider only when unable to handle an unexpected and temporary surge in call traffic due to exigent circumstances, such as in the event of a natural disaster or other comparable emergency that is outside the provider's control. Specifically, the Commission proposes to modify § 64.604(c)(5)(iii)(N)(1)(iii) of its rules to provide that a certified provider may subcontract with another certified provider for, or otherwise authorize the provision by another certified provider of, communications assistants (CA) services or call center functions only in the event of an unexpected and temporary surge in call traffic due to exigent circumstances, and seeks comment on this proposal. The purpose of this rule change is to better ensure that the integrity of VRS by requiring that it be provided by qualified, stand-alone providers who operate their own call centers and employ their own CAs. In all other circumstances, certified providers must provide the core components of VRS using their owned facilities and their full- or part-time employees. The Commission finds this proposed modification to be consistent with its stated VRS program goals. The Commission further finds this proposed modification to be reasonable and in the public interest, as it will facilitate redundancy, and thus reliability, of VRS services. The Commission seeks comment on the specific types of exigent circumstances that would warrant subcontracting or similar arrangements between eligible providers. Transfer of call traffic between eligible providers should not routinely occur, but rather should be the rare exception that occurs only in exigent circumstances.

The Commission tentatively concludes that, when a provider seeks to be reimbursed from the Fund for minutes transferred to another eligible VRS provider as a result of exigent circumstances, it should submit such minutes in its monthly submission to the Fund administrator for reimbursement in the normal course, but must identify any such minutes as having been handled by another provider and identify the other provider. The Commission also tentatively concludes that the Fund administrator shall determine whether

exigent circumstances exist as part of its normal processes for verifying monthly submissions, and may request additional information to determine whether, in fact, exigent circumstances existed and whether reimbursement is warranted. The Fund administrator may withhold reimbursements for minutes where it finds that no exigent circumstances existed, or otherwise finds that the request for reimbursement is not sufficiently substantiated. The Fund administrator shall reimburse the transferring eligible provider for compensable minutes resulting from transferred call traffic. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on whether there are any other types of documentation that providers should be required to furnish to the TRS Fund administrator, with their monthly submissions of data to support reimbursement from the Fund, in order to demonstrate that exigent circumstances necessitated the transfer of call traffic, and on the specific information they should be required to provide regarding the minutes handled under such circumstances.

The Commission seeks comment on how the transferring eligible provider may compensate the transferee for handling such call traffic without violating its rule against VRS revenue-sharing agreements. The Commission tentatively concludes that such compensation may not be based on per-minute revenue sharing, and seeks comment on this tentative conclusion. The Commission also seeks comment on whether, in the event the Fund administrator or the Commission determines that no exigent circumstances existed, the Fund administrator should withhold payment for the transferred traffic, or the Fund administrator should be authorized to directly pay the eligible provider that handled the traffic; and whether, in the latter scenario, directly paying the eligible provider that handled the traffic might provide incentives for eligible providers to engage in unauthorized revenue sharing arrangements.

Finally, the Commission seeks comment on whether there are any other amendments that should be made to its rules to facilitate the transfer of call traffic between eligible providers in exigent circumstances.

Furthermore, the Commission seeks comment on whether there are any other limited exemptions it should recognize to its general prohibition on an eligible provider contracting with or otherwise authorizing any third party from providing interpretation services or call center functions on its behalf, in light of its

intention to promote qualified, stand-alone providers operating their own call centers and employing their own CAs.

## **INITIAL PAPERWORK REDUCTION ACT ANALYSIS OF 1995**

Document FCC 11-155 seeks comment on a potential revised information collection requirement and may result in a revised information collection. If the Commission adopts the revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995. See Pub. L. 104-13, 44 U.S.C. 3501 et. seq. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment from the public on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” See Pub. L. 107-198, 47 U.S.C. 3506(c)(4).

## **INITIAL REGULATORY FLEXIBILITY CERTIFICATION**

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (FNPRM). See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments to document FCC 11-155. The Commission will send a copy of document FCC 11-155, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

### **A. Need for, and Objectives of, the Proposed Rules**

The Commission proposes to modify its rules to provide that a certified VRS provider may subcontract with another certified VRS provider for, or otherwise authorize the provision by another certified provider of, CA services or call center functions only in the event of an unexpected and temporary surge in call

traffic due to exigent circumstances, and seeks comment on this proposal. To better ensure the provision of VRS by qualified, stand-alone providers operating their own call centers and employing their own CAs, the Commission tentatively concludes that it should modify § 64.604(c)(5)(iii)(N)(1)(iii) of its rules to allow an eligible VRS provider to contract with or otherwise authorize another eligible provider to provide CA services or call center functions on its behalf only when necessitated by an unexpected and temporary surge in call traffic due to exigent circumstances, such as in the event of a natural disaster or other comparable emergency that is outside the provider's control. In all other circumstances, certified providers must provide the core components of VRS using their owned facilities and their full- or part-time employees. The Commission finds this proposed modification to be consistent with its stated VRS program goals, and finds this proposed modification to be reasonable and in the public interest, as it will facilitate redundancy, and thus reliability, of VRS services.

**B. Legal Basis**

The legal basis for any action that may be taken pursuant to document FCC 11-155 is contained in sections 1, 4(i), (j) and (o), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), and § 1.429 of the Commission's rules, 47 CFR 1.429.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply**

Wired Telecommunications Carriers. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”

In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these 3,188 firms, only 44 had 1,000 or more employees. While the Commission could not find precise Census data on the number of firms within the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the wired telecommunications carriers are small.

All Other Telecommunications. Under the 2007 U.S. Census definition of firms included in the category “All Other Telecommunications (NAICS Code 517919)” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”

In this category, the SBA deems a provider of “all other telecommunications” services to be small if it has \$25 million or less in average annual receipts. For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately



98%) had \$25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers in this category are small.

Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (“PCS”), and Specialized Mobile Radio (“SMR”) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

The Commission notes that under the standards listed above some current VRS providers and potential future VRS providers would be considered small businesses. There are currently ten eligible VRS providers, five of which may be considered small businesses. In addition, there are several pending applications from entities seeking to become certified to provide VRS that may be considered small businesses.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

There are no new record keeping or reporting requirements proposed in the FNPRM in document FCC 11-155.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.” 5 U.S.C. 603(c)(1)-(4).

In order to minimize the adverse economic impact on small entities, the Commission seeks comment on the alternative types of exigent circumstances that would warrant subcontracting or similar arrangements between eligible providers. The Commission’s goal, in order to prevent small entities from sustaining unwarranted and unjustifiable costs, is to ensure that this proposed rule modification does not open a window for the routine transfer of call traffic between eligible VRS providers, for example, in order to avoid violation of its VRS speed of answer rule.

Also, in order to minimize the adverse economic impact on small entities, the Commission seeks comment on various ways to implement and compensate for the proposed rule modification. Specifically, the Commission seeks comment on three alternatives: (1) whether, in the event the Fund administrator or the Commission determines that no exigent circumstances existed, the Fund administrator should withhold payment for the transferred traffic; or (2) the Commission should directly pay the eligible provider that handled the traffic; and (3) whether, in the latter scenario, directly paying the eligible provider that handled the traffic might provide incentives for eligible providers to engage in unauthorized revenue sharing arrangements.

In conclusion, the Commission seeks comment on the alternatives discussed above for such transfer of traffic. The Commission also seeks comment on whether any specific reimbursement policy would minimize the adverse impact on a substantial number of small entities if any small entities would in fact be impacted by this rule modification.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with Proposed Rules**

None.

## **ORDERING CLAUSES**

Pursuant to the authority contained in sections 1, 4(i), (j) and (o), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), and § 1.429 of the Commission's rules, 47 CFR 1.429, the FNPRM in document FCC 11-155 IS ADOPTED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the FNPRM in document FCC 11-155, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

### **List of Subjects in 47 CFR Part 64**

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

## Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

### **Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254 (k), 227; secs. 403 (b)(2)(B), (c), Pub. L. 104-104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 207, 228, 254 (k), 616 and 620, unless otherwise noted.

### **SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES**

2. The authority citation for subpart F is revised to read as follows:

**Authority:** 47 U.S.C. 151-154; 225, 255, 303(r), 616, and 620.

3. In § 64.604, revise paragraph (c)(5)(iii)(N)(1)(iii) to read as follows:

#### **§ 64.604 Mandatory minimum standards.**

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(c)\*\*\*

(5)\*\*\*

(iii)\*\*\*

(N)\*\*\*

(1)\*\*\*

(iii) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless necessitated by an unexpected and

temporary surge in call traffic due to exigent circumstances and the authorized third party also is an eligible provider. Exigent circumstances shall be deemed to include a natural disaster or other comparable emergency that is not reasonably foreseeable and is outside the provider's control, but shall not include events that in the ordinary course of business could reasonably have been anticipated, such as a surge in traffic occurring during a holiday period. When a provider seeks to be reimbursed from the Fund for minutes transferred to another eligible VRS provider as a result of exigent circumstances, it should submit such minutes in its monthly submission to the Fund administrator for reimbursement in the normal course, but must identify any such minutes as having been handled by another provider and identify the other provider. The Fund administrator shall determine whether exigent circumstances exist as part of its normal processes for verifying monthly submissions, and may request additional information regarding the specifics of the exigent circumstances for purposes of determining whether, in fact, exigent circumstances existed and whether reimbursement is warranted. The Fund administrator may withhold reimbursements for minutes where it finds that no exigent circumstances existed, or otherwise finds that the request for reimbursement is not sufficiently substantiated. The Fund administrator shall reimburse the transferring eligible provider for compensable minutes resulting from transferred call traffic, and the transferring eligible provider may compensate the transferee for handling such call traffic so long as such compensation is not on a per-minute basis.

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